IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 107 OF 2003.

Shri Yeshwant Palekar,
r/o Cortalim, Mormugao,
Goa. ... Petitioner.

Versus

1. The Managing Director,
   Kadamba Transport Corporation,
   having office at Kadamba
   Bus Terminus, Panaji.
2. The Health Officer, Urban
   Health Centre, Directorate
   of Health Services, Panaji.
3. The Director of Food &
   Drugs Administration, Govt.
   of Goa, Old GMC Complex, Panaji.
4. The Corporation of City of
   Panaji through its Commissioner,
   having office at Corporation
   of City of Panaji Bldg.,
   Dr. Pissurlekar Road,
   Panaji.
5. The State of Goa through
   its Chief Secretary,
   Secretariat, Panaji.
6. Shri Jose Lawrence Fernandes;
7. Shri Ramrai K. Naik;
8. Shri Chandrakant J. Borkar;
9. Sangun L. Mangueshkar;
10. Nissar Jamadar;
11. K.M. Mehboob;
12. Jyoti Vengurlekar
13. Shambu Kavlekar;
14. Vikas R. Barad;
15. Hassan Miyam Narangi;
16. Jamban Mahmood;
17. Shri Vassant Nalkar;
    Respondents 6 to 17 carrying
    on business at Kadamba Bus
    Terminus, Panaji. ... Respondents.

Mr. D. Pangam, Advocate for the Petitioner.
Mr. S.G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Respondent No. 1.
Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents 2, 3 and 5.
Mr. A.F. Diniz, Advocate for the Respondent No. 4.

Mr. M. Amonkar, Advocate for the Respondents 8, 9, 10 and 16.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 13th August 2003.

ORAL JUDGMENT (PER REBELLO, J.)

The original petitioner expired during the pendency of the petition and has been substituted by the present petitioner. The reliefs as prayed for in the petition are as under:-

(a) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction, commanding the respondents 1 to 5, to immediately stop the illegal activities of selling food items carried on by the respondents 6 to 17 within the Kadamba Transport Corporation Bus Terminus at Panaji;

(b) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding respondents 1, 2, 4 and 5 to maintain the Kadamba Transport Corporation Bus Terminus at Panaji in proper condition, by repairing and further maintaining the toilets, as also the roads within the Kadamba Transport Corporation Bus Terminus at Panaji;

(c) This Hon'ble Court be pleased to issue a further writ of mandamus or writ in the nature of mandamus or any other direction, commanding the respondents 1 to 5 to clear all the nuisance/garbage/waste lying in the Kadamba Transport Corporation Bus Terminus at Panaji as well as the adjoining marshy lands; and

(d) For such other and further reliefs that this Hon'ble Court deems fit and proper.

2. It is the case of the petitioner that the Kadamba Transport Corporation Bus Terminus at Panaji is the main bus stand for the entire Goa. Most of the Inter-State buses either start or reach the commuters at the Panaji Kadamba Transport Corporation Bus Terminus. It is also the biggest bus stand in Goa. On account of heavy rush of passengers visiting the Kadamba Transport Corporation Bus Terminus, various business activities have flourished within the said complex. Apart from such business, several illegal business/activities are going on in the said complex. The illegal activities are going on in front of the authorities, who, inspite of being aware of the same, have chosen to ignore the said illegal activities. For the reasons set out, it is contended that the respondent no. 1 is 'State' or an instrumentality of the State within the meaning of Article 12 of the Constitution of India. Although aware of the fact that thousands of commuters visit the bus stand every day, including tourists, the respondent no. 1 as also respondent no. 5 have, right from the beginning, neglected to maintain and keep the bus terminus clean. It is pointed out that there are potholes everywhere. The garbage as well as waste, which are generated out of the various business activities within the complex, are dumped in the open area. Such garbage, includes plastic bags and bottles, which have been dumped in the adjoining areas which are covered with mangroves and marshy lands. The garbage is thrown on the boundary towards the South-East side of the terminus. Some of the garbage falls within the bus terminus and some falls within the marshy lands with mangroves, as a result the entire terminus has become unhygienic and unsafe due to the negligence on the part

of the respondent no. 1.

It is pointed out that there is a pay-toilet maintained by the respondent no. 1, who appointed a contractor to run the same. The contractor, though prompt in collecting the money, does not maintain the toilet as they are not clean nor maintained properly. The contention of the petitioner is that the condition of the said toilet is pathetic.

It is then the specific case of the petitioner that the respondents 6 to 17 herein are carrying on the business of selling food items within the Kadamba Transport Corporation Bus Terminus. The kiosks in which the respondents 6 to 17 are carrying out the business of selling food items by running restaurants are not meant for such activities. It is the case of the petitioner that the said kiosks/stalls were reserved for selling flowers, cigarettes, etc.. It is also contended that the kiosks/stalls have been obtained illegally from persons who were originally made allotments by respondent no. 1.

3. It is the case of the petitioner that the respondent no. 5 has enacted a law known as the Goa Public Health Act, 1985 for the purpose of advancing public health in the State. In terms of Section 37(4) any accumulation or deposit of refuse or other matter is health 'nuisance'. Respondent no. 2 in terms of Section 38 of the Act is required to inspect from time to time the areas within his jurisdiction to find out whether nuisance is being caused. Respondent no. 2 is required to enforce the provisions of the said Act in order to

abate such nuisance. Reference is made to other Sections for the purpose of abatement of nuisance and prevention of recurrence.

In terms of Rule 50 of the Prevention of Food Adulteration Act, 1955, no person shall sell, stock, distribute, or exhibit for sale any article of food, including prepared food or ready-to-serve food except on obtaining a licence from the licensing authority as provided under Rule 5 of the Goa, Daman and Diu Prevention of Food Adulteration Rules, 1982. The petitioner relies on a communication, dated 31st October 2002, to point out that respondents 6 to 17 have not obtained any licence in terms of the Rules. It is, therefore, contended that respondents 6 to 17 are liable to be stopped from carrying out the said business of selling food items in breach of the said Rules.

It is then set out that in terms of Section 259 of the Goa Municipalities Act, no person shall use or permit to be used any premises in the municipal area as a eating house, tea or coffee shop, restaurant, dining-saloon, refreshment room or for a like purpose, or for preparation or sale for the purpose of trade of any article of human food or drink without licence. There are powers of entry and inspection. In view of the facts set out therein, the reliefs as have been adverted to earlier.

4. Dr. L.A. Lawande, the Health Officer, has filed an affidavit referring to the business activities carried on by the respondents 6 to 17. It is set out that routine inspection of the Kadamba Bus Stand premises was carried out and it was found that people were carrying

out the business in unhygienic conditions and causing health hazards. The then Health Officer had issued notice, dated 12th July 1999, to all those persons, who were carrying on business and directed them to produce documents. Some of them replied saying that they are paying shop rent to the respondent no. 1. None of the shop owners produced any documents as directed by respondent no. 2. On 30th January 2002, alongwith the Chief Medical Officer, Ophthalmic Cell, Deputy Director of Health Services and Maintenance Engineer carried out joint inspection. It was found that all the dustbins placed at the Kadamba Bus Terminus were completely filled with garbage, rotten vegetables and other waste items and were overflowing, giving very dirty smell to the surroundings. It was also observed that near the exit side gate/toll booth, roadside rain water drain was filled with sewage water, filth and night soil, whose source was from Kamat Canteen and Kadamba Bus Terminus. Though it was repaired and substitute provisions made, it was again blocked and the same is causing health hazard. The sullage waste and water chamber lids are broken, water is stagnating and has become a more positive place for mosquito breeding. The kiosks located on the Southern side of the Kadamba Bus Terminus are doing business without maintaining proper hygienic/health norms, garbage was being observed as thrown on the footpath instead of putting in dustbins. Vide letter, dated 14th February 2002, respondent no. 1 was again requested to instruct the concerned personnel to do the needful at the earliest and co-operate in getting rid of health hazards and help to maintain a clean and healthy atmosphere. On 30th May 2003, a letter was written to the Commissioner of Panaji City

Municipal Corporation to take appropriate action against all the illegal kiosk owners, who are doing illegal business without obtaining NOC from the Health Department. It is set out that the persons named in the letter, dated 30th October 2002, have neither asked for NOC nor NOC have been issued to them by respondent no. 2 to run the business of hotel/restaurant and selling food items at the Kadamba Bus Stand.

5. On behalf of respondent no. 3 an affidavit was filed by S.S. Sardessai, who is the Licensing Authority under the provisions of the Goa Prevention of Food Adulteration Rules, 1982, for Tiswadi Taluka. It is pointed out that respondent no. 3 has granted licence only to respondents 8, 9, 11 and 12 for selling food articles under the provisions of the Prevention of Food Adulteration Act, 1954 and the Rules framed. The respondents 10 and 14 have applied for licence and so far no action has been taken in view of the letter, dated 6th May 2003. Show cause notice was issued to respondent no. 6 for operating a food establishment in contravention of the provisions of the Goa Prevention of Food Adulteration Rules, 1982. Similarly show cause notice has been issued to respondent no. 15 and pursuant to that, respondent no. 15 has closed his business. Shops of respondents 7, 15, 16 and 17 are found closed. Respondent no. 16 is only selling newspapers and magazines. Respondent no. 13, it is pointed out, is carrying on business of food items in breach of the provisions of the Goa Prevention of Food Adulteration Rules, 1982. It is pointed out that respondent no. 3 will take steps within 3 weeks to stop the persons who are carrying on business of selling food items without licence as required under law.

6. Respondent no. 1 the Managing Director of Kadamba Transport Corporation has filed an affidavit. It is pointed out that Kadamba Transport Corporation started its operation from 2nd October 1980. The Government of Goa has leased the Kadamba Bus Stand to Kadamba Transport Corporation from 7th April 1983 comprising total area of 40,894 sq. mts. alongwith 5298.40 sq. mts. of built-up area of the main terminal building, temporary sheds, temporary stalls, pay toilets, etc. for a period of 99 years. A lease deed was subsequently executed on 10th May 1985, effective from 7th April 1983. Respondents 6 to 16, it is pointed out, who were having their kiosks near the River Navigation Jetty opposite Tourist Hostel in Panaji were shifted to the Kadamba Transport Corporation in 1983. In order to have hygienic atmosphere and cleanliness around, Kadamba Transport Corporation built a shed and accommodated respondents 6 to 16 in various stalls in the shed each having an area of 4 sq. mts.. The shed has a big common verandah providing access to commuters and others wanting to visit the stalls. Respondent 6, it is pointed out, was leased shop no. 1 to sell bakery products and confectioneries. Respondent no. 7 was leased shop no. 6 to sell electrical items. Respondent no. 8 was leased shop no. 7 to sell cold drinks and soda. Respondent no. 9, shop no. 15 to sell fruits and vegetables. Respondent no. 10, shop no. 20 for general stores and sale of ready-made items. Respondent no. 11, shop no. 23 to sell fruits and vegetables. Respondent no. 12, shop no. 24 for sale of fancy dress and a general stores. Respondent no. 13, shop no. 31 for general stores and photo frames. Respondent no.

14, shop no. 34 to sell cold drinks and cigarettes. Respondent no. 15, shop no. 26 to sell fruit and vegetables. Respondent no. 16, shop no. 19 to sell newspapers, biscuits, etc.. Respondent no. 17 was allotted a stall on lease in a different shed known as Vegetable Stall Shed for sale of Shev and Chiwda. Respondent no. 17 in breach of the lease agreement is running a tea shop. He was evicted and the stall is vacant. Respondents 6 to 16 were required to take licences. In breach of the lease agreement and without obtaining prior permission from Kadamba Transport Corporation or other authorities, they started restaurant business in their respective stalls and have not stopped the business despite various warnings by Kadamba Transport Corporation. Eviction notices have been issued. The last one was served on 31st May 2003. On four or five occasions, their merchandise meant for running restaurant, including utensils, were confiscated by Kadamba Transport Corporation. It is pointed out that they would stop the business for a while and again re-start. On account of the restaurant business illegally commenced by the respondents 6 to 16, the surroundings get dirty. Kadamba Transport Corporation have employed a sweeper contractor, who in turn employs 10 sweepers to sweep and clean the Kadamba Bus Stand. Waste garbage gathered on site is lifted by the Cleaning Squad of City Corporation, (earlier Panjim Municipal Council). Some of the stall holders have employed a private garbage agency which removes daily garbage from the respective stalls.

Dealing with the issue of pay-toilet, it is pointed out that regular inspection is carried out to

see that it is kept clean by the Contractor. There is a sulabh pay-toilet at the South-West corner of the complex. Recently two mobile toilets have been installed. Litter and garbage spread around is cleaned. Every day about 1 lakh commuters visit the Bus Stand and every moment garbage or litter is generated, although cleaning and sweeping is a continuous process from 8 to 5 o'clock. It is pointed out that a new Sullage, Sewage and Sewerage Scheme is intended for Kadamba Bus Stand which is being worked out. If implemented, the Bus Stand will be maintained in more hygienic condition. It is then pointed out that no garbage is allowed to be dumped in the open area. From time to time, plastic bags and bottles which are dumped by commuters or others, are removed. It is pointed out that garbage is not thrown on the boundary of the Terminus on the South-East side or on the adjoining marshy lands. It is admitted that respondents 6 to 16 are doing business of running restaurants in their respective stalls and eviction notices have been already issued to them.

7. Respondent no. 8 has filed an affidavit setting out that his father was the lessee of shop no. 7 and that he is selling cold drinks and other items under the licence issued by the Directorate of Food and Drugs. Respondent No. 9 Sagun Mangueshkar is a lessee in respect of shop no. 15. Respondent no. 12 who has a stall has set out that she has started selling tea and snacks and that she may be allowed to run a canteen of tea and snacks on humanitarian grounds. It is his case that he is selling tea, coffee and other items. Respondent no. 16 has filed an affidavit, dated 8th July 2003, denying that he is selling eatables. He

points out several new kiosks spread all over Kadamba Transport Corporation Bus Stand have been put up causing all obstacles to the commuters and further affecting the business of the respondents 6 to 17. He further states that all these kiosks are selling eatables without any licence from the Director of Prevention of Food Adulteration. They even sell omelettes, etc.. An STD booth has been allowed right in the centre of the footpath and also Goa Krishi Bazaar, Mapusa, has been allowed to erect a mini vegetable market right in the centre of the footpath without obtaining licence from the Corporation of the City of Panaji.

8. Respondent no. 3 has filed an additional affidavit. He has set out that on 11th June 2003, he has conducted survey by deputing Food Inspectors to check the operation of road side food stalls, gadas, etc., which are carrying on business of selling food items without licences from Miramar to Donapaula area. It was found that many of them were operating without licence and some of them have been served with notices.

Respondent no. 1 has filed an additional affidavit. It is pointed out that one shed was provided for vegetable vendors comprising 20 kiosk like premises. There were earlier 12 stalls operating in the two sheds and 20 stalls in the vegetable stall shed. These were regulated and started paying rent to the Kadamba Transport Corporation. On the main bus stand building 32 different shop premises were provided for providing different facilities to the commuters. The middle open portion of the main bus stand has been partitioned to provide super market facilities and four more

independent premises became available, which have been let out by the Kadamba Transport Corporation. Recently, it is pointed out, 8 stalls have been set under Deendayal Swayam Rojgar Yojana and allotted by the respondent Government to unemployed youth. In addition, Kadamba Transport Corporation has provided a milk booth to the State Co-operative Milk Producers Union Limited. At Exhibit R-8 are the names of the various persons who have the shops allotted to them as shown in Exhibit R-7. In the affidavit, dated 14th July 2003, it is pointed out that the objects of the Corporation have been set out. It is pointed out that the accumulated losses of the Corporation are today over Rs. 35 crores. The burden of giving student concession is Rs. 7 lakhs every month. 50% concession is also granted to freedom fighters, handicapped and senior citizens. Cancer patients have been given 100% concession on all routes.

It is then pointed out that by Order, dated 7th December 2001, the Goa Government has formulated Deendayal Swayam Rojgar Yogana Scheme to provide self employment opportunities. Under the Scheme Kadamba Transport Corporation has to enter into lease agreements with kiosk owners (beneficiaries) for the space occupied by them, initially for a period of 5 years. No rent is payable for the first year and for the second year the rent will not be more than Rs. 100 per sq. mt. per month. After the initial period of 5 years, the lease is renewable for equal period with 10% increase in the rent. The lease deed entered into between Kadamba Transport Corporation and respondent no. 5 would show that the premises have been leased for Bus Stand Complex

or for any other public purpose and all incidental and allied purposes thereto.

A third additional affidavit was filed on 28th July 2003 pursuant to directions of this Court issued on 15th July 2003. It is pointed out that on 19th December 2001, four spaces were given to the persons names therein. On 27th December 2001, another space was allotted to another person and similarly on 7th October 2002 and 22nd October 2002, two other persons, who are named in paragraph 1 of the affidavit were allotted spaces. Reference is made to the Deendayal Swayam Rojgar Yogana Scheme, which will be adverted to later on. It is pointed out that no lease deed has been entered into with any of the kiosk vendors under the Scheme so far. No stall, kiosk or space has been allotted under any other scheme at Kadamba Bus Stand.

9. On behalf of respondent no. 4, the Commissioner has filed an affidavit in which it is pointed out that Show Cause Notices have been issued to respondents 6 to 17 and directions have been issued to respondent no. 1 under Section 185 for collection of garbage.

10. G.P. Chimulkar, Special Secretary Finance, Ministry of Finance, Government of Goa has filed an affidavit on behalf of respondent no. 5. It is pointed out that Kadamba Transport Corporation has bus stands at Panaji, Margao, Mapusa, Vasco, Curchorem, Ponda, Sanquelim, Assnora, Bicholim and Marcel and as the conditions at the bus stands are unhygienic and as also there are no funds in their kitty to carry out the major

works of beautification and upkeep, the Government has finally decided to intervene in the matter. The Government had directed the Goa State Infrastructure Development Corporation to carry out inspection and a scheme for improvement of Kadamba Transport Corporation Bus Terminus has been prepared. The various steps are set out in paragraph 8. It is pointed out that Goa State Infrastructure Development Corporation has decided to carry out and complete the work preferably by December 2003. Cabinet has also granted approval for spending money for improvement of such public bus stands. The State Government, this year, has allotted rupees five and half crores to Kadamba Transport Corporation for the purpose of managing the activities of the Corporation which include taking up the work of the present bus stand. It is set out that the State Government has, accordingly, decided to carry out complete cleaning, beautification and re-laying of Kadamba Transport Corporation Bus Terminus preferably by 31st December 2003. In response to the Order of this Court of 15th July 2003, it is pointed out that the scheme known as the Deen Dayal Rojgar Yojana has been framed with the objective of minimising unemployment and that the policy was enunciated as a welfare measure and considering Articles 162 and 166 of the Constitution of India the State Executive has the authority and power to frame the scheme. It is pointed out that the scope of the present petition does not call for interference with the State's avowed policy measure. It is pointed out that having kiosk and stalls near bus stations, railway stations, airport lounges or port areas greatly facilitates public convenience. It is not necessary to go into the various other averments except to set out

that it is pointed out that if the concept of auction or tender is brought in for the purpose of such schemes and such policy measures, then it would defeat the very object of the scheme inasmuch as in a tender or auction the highest bidder would be the recipient of the award. That the unemployed youth on account of their economic incapacity would be unable to compete in the open market on any auction or tender. It is in these circumstances that the policy has been announced on the floor of the House.

11. From the affidavit of respondent no. 3, it is clear that the State Government has planned to carry out and complete cleaning, beautification and re-laying of Kadamba Transport Corporation Bus Stand at Panaji preferably by 31st December 2003. Even if that be the case, it will be necessary, considering the issue involved in the petition, to issue directions which will generally cover situations, like the one which has been brought to the notice of the Court, at the Panaji Kadamba Bus Stand.

12. We may now consider the relevant provisions and also refer to the authorities, who are dutycharged with carrying out the duties imposed on them by law. A large number of legislations are enacted from time to time with the avowed objective of protecting the health of citizens abating nuisance particularly ecology and environment. It is, however, found that most of the times the laws enacted merely remain on the Statute Book and are hardly enforced. It has been so noted by the Apex Court in **Indian Council for Enviro-Legal Action v. Union of India and others,** (1996) 5 S.C.C. 281, where

the Apex Court has observed as under:-

> "Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in eological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."

Firstly we have the Goa Municipalities Act, 1968. Under Section 259 no person shall use or permit to be used any premises in the municipal area as an eating house, tea or coffee shop, restaurant, dining-saloon, refreshment room or for a like purpose or

for the preparation or sale for the purposes of trade of any article of human food or drink or as a hotel or a lodging house except under and in accordance with the conditions of a licence granted under the provisions of the bye-laws made in this behalf. The Chief Officer has been entrusted with the power of entering and inspecting any of the premises. Any person contravening the provisions or refusing to comply with the notice issued by the Chief Officer is liable to be prosecuted and convicted. Under Section 262 notwithstanding anything contained in Sections 259 and 260, no licence shall be required under the said Sections for the use of any premises for any purpose or for carrying out any trade specified therein in respect of which a licence has been obtained under the law for the time being in force in the State regarding prevention of food adulteration.

Under Rule 50 of the Prevention of Food Adulteration Rules, 1955, no person shall manufacture, sell, stock, distribute or exhibit for sale any article of food, including prepared food or ready to serve food (or irradiated food) except under a licence. The Rule also provides that no person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place of storage of foul and waste matter. Under Sub-Rule (13) an itinerant vendor granted a licence under these rules shall carry a metallic badge on his arm showing clearly the licence number, the nature of articles for the sale of which the licence has been granted, his name and address and the name, address of the owner, if any, for whom he is

working. His containers of food and the vehicle shall also be similarly marked. In addition to the metallic badge the vendor shall, if so required by the State Government or the local authority, carry an identity card with his photograph and the number of the licence. The identity card shall be renewed every year. For the purpose of the Act food has been defined under Section 2(v) to mean any article used as food or drink for human consumption other than drugs and water and includes (a) any article which ordinarily enters into, or is used in the composition or preparation of, human food, (b) any flavouring matter or condiments, and (c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purpose of this Act. 'Primary Food' has been defined to mean any article of food, being a produce of agriculture or horticulture in its natural form. The word 'unwholesome' and 'noxious' when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

We then have the provisions of the Goa Public Health Act, 1985 and Rules, 1986. Under Section 29(1) no person shall construct any building, house, cess pool and any other structure unless prior permission to that effect is obtained from the Health Officer or the Medical Officer in charge of the respective Health Centre, at the time of starting such construction and also at the time of actually occupying such constructed premises. 'Building' for the purpose of this Act includes a house, out-house, stable, latrine, godown, shed, but-wall (other than a boundary wall not exceeding 2.5 meters in height) and any other such structure,

whether built with bricks, wood, mud, metal or any other material whatsoever; a structure on wheel or simply resting on the ground without foundations; and a ship, vessel, boat, tent, van and any other such structures used for human habitation. 'Food' has been defined to mean every article consumed or used by man, for food, drinks, or chewing, and all materials used and/or mixed in the composition or preparation of such article and shall also include flavouring and colouring matter and condiments. Under Section 30 no person having control over any building or land shall cause or allow the water of any sink, sewer, latrine or other sanitary convenience, or any other liquid or other matter which is, or is likely to become offensive to run into a drain, or to be thrown or put upon any street or open space or to soak through any external wall; or any offensive matter from any sewer, latrine or sanitary convenience, to run, drain or be thrown into a surface drain in any street. Under Section 33 every local authority shall provide and maintain in proper and convenient places a sufficient number of sanitary conveniences for the use of the public and cause all such places to be kept in proper order so as not to be a nuisance or injurious to health. Rule 14 provides for conditions to run coffee house, tea shop, taverna, bars, wine shop, liquor shops, cold drink house, juice sellers and other establishment serving drinks for public excluding those who sell intact tins or bottles for public, there shall be minimum one or more rooms according to the nature of the establishment and movement of the public. The size of the rooms shall be sufficient for sitting of the public and preparation of drinks, if cooking is done there shall be a separate

room for such purposes and with sufficient wash basins and smokeless environment. The washing rooms for utensils shall be away from preparation place. Arrangement for water sewerage has to be made to avoid stagnation. Toilets in sufficient number, independent for male and female, shall be provided. The condition can be waived if the market complex is provided with toilet block or there are any public toilets within the distance of 50 mts. Rule 15 is the Rule which provides for conditions to run restaurant, eating houses, boarding, etc.. Various conditions are set out which provide that the garbage and waste products shall not be thrown indiscriminately but shall be collected in proper closed containers which shall be discharged in the Municipal garbage collection pit. The entire premises of the establishment shall be maintained clean, free from flies, insects and must observe recommendation done by the sanitary authority or public sanitary inspector during their inspections. Under Rule 20 it is provided that the closing down of any establishment or dwelling house shall be done through the District Magistrate who shall give the establishment all reasonable opportunities and furnish guidelines before closing down the same. A look of these provisions and the facts as disclosed on affidavit, will indicate that the law is followed more in breach.

13. Before issuing directions, it is necessary to deal with another aspect, though this was not initially the subject matter of the present petition but has come into issue after one of the Respondents raised the same . As noted the Kadamba Transport Corporation has its bus stands in several places. Most of the time the land has been acquired by the State Government for the public

purpose of a bus stand. In these circumstances, the question really arises whether it is open to the said Public Authority or the State Government to direct the local authority to allot lands and give the same on lease for the purpose of any scheme that the Government may have of creating job opportunities, however, laudable. It is true as contended on behalf of the respondent State that it is not in the province of the Court to go into the issue as it is best left to the Executive and the Legislature who have been dutycharged under the Constitution with those functions. However, from the affidavits themselves we have seen that over a lakh of commuters normally use the bus stand at Panaji. There are large number of structures including a mini vegetable market. Maintenance of markets would really be the job of the Municipal Council. It has now come on record that the State Government has framed a scheme as the Deendayal Swayam Rojgar Yogana Scheme with the objective of self-employment under this scheme. The location of the units/project is at the Kadamba Transport Corporation Bus Stands, various Government Offices, Goa Tourism Development Corporation (GTDC), properties/public places of tourist importance, Collectorates, RTO Offices, etc., or any other suitable Government properties where such activities could be undertaken. The project is financed by making available finance as Capital assistance of 90% of the working capital requirement not exceeding Rs. 1 lakh, based on the actual need of the project. The Government further subsidies the cost of kiosk to the maximum extent of Rs. 15,000/- or Rs. 20,000/- or Rs 25,000/- depending upon the size/cost of the kiosk. The cost of the kiosk (after the subsidy portion is taken out), the repayment

starts after 12 months from the date of release of financial assistance at the rate of 10% simple interest in 60 monthly instalments, starting from the 13th month. Persons, who are eligible, are unemployed youth and an important factor is whose residence is proximate to the work place. The scheme does not contemplate giving a place to other than an individual.

. .Insofar as Government is concerned, land can only be given in the manner provided under the provisions of the Goa, Daman and Diu Land Revenue Code. Similarly land acquired by the local authority or corporation can only be used for the purpose of that local body. However, as the issue is directly not in issue in this petition, we do not propose to finally decide the issue except to the extent of the Kadamba Transport Corporation, which has been heard in the matter.

14. Considering the need to maintain a healthy and clean environment the need of the travelling public and also to protect the mangrove areas, which are adjoining the Bus Stand, it would be necessary that any scheme prepared must result in providing easy access and clean environment to the commuters and also protecting the mangrove areas. It is now well known that the mangrove areas have to be protected as they are the breeding grounds for various types of fish as also other aquatic flora and fauna. Bearing in mind the fundamental duties which every citizen is called upon to discharge and the fundamental rights of citizens and directive principles

which the State and other organizations are called upon to implement, it would be necessary, in the first instance, and without prejudice to the rights of the respondents 2 and 3, to take action against those who are carrying on illegal activities thereon more specifically activities which are covered under the provisions of the Prevention of Food Adulteration Act, 1954 and Rules framed thereunder and the Goa Public Health Act, 1985 and Rules of 1986 to issue directions.

15. In the light of what is set out in the affidavits:-

(1) The statement made on behalf of respondent no. 5 as contained in paragraph 12 of the affidavit of G.P. Chimulkar is accepted. Respondent State is directed to carry out the plans and complete the cleaning, beautification and re-laying of Kadamba Transport Corporation Bus Terminus at Panaji preferably by 31st December 2003 and at any rate not later than 30th June 2004,bearing in mind that the prinicipal beneficaries must be the commuters. While carrying out the plans to take steps to protect the mangrove areas from garbage and other waste.

(2) It is clear that respondents 6 to 16 are carrying on the business of restaurant, eating house or tea stalls without having the necessary licence or permission to carry out such activity. Respondent no. 17, from the affidavit, has been evicted and is no longer carrying on any activity. Respondent No.1, to take steps including under the Public Premises Act as applicable in the State of

Goa, to cancel the license granted if those respondents do not stop the illegal activity within two months from today or other steps, if they have no licence, under the powers vested in them under the-various -acts, under which they are conferred powers. This direction will also apply to all other Kiosks and shops functioning within the premises of the K.T.C. A compliance report to be filed within six months from today.

(3) Considering the large number of shops already existing as also fruit and vegetable stalls and as the main object of the Kadamba Transport Corporation is not to carry on those objectives but to provide a healthy environment for over one lakh commuters who use the bus stand every day, the Kadamba Transport Corporation is directed not to allow any further structure to be put up, whether in the form of kiosk or otherwise,either by themselves or any scheme of the Government on the areas leased to them by the State Government. This direction will not apply to any revenue generating scheme of K.T.C. put up in the form of permanent construction and where the premises are let out by public auction to the highest bidder and do not affect the commuters.

(4) The Kadamba Transport Corporation is directed to enter into lease deed with existing kiosk owners under their usual terms. They may be allowed to continue as leases if they are already operational and already allotted and fall under the Deen Dayal Swayam Rojgar Yojana. The fees whether as leasee or

licencee to be fixed will be equivalent to lease rentals, being presently charged by K.T.C. considering the huge losses being incurred by K.T.C.as disclosed in their affidavits.

(5) Considering the number of commuters, the number of toilets/urinals as presently existing are insufficient since the State Government is proposing a scheme, this aspect of providing adequate toilets be taken into consideration while finalizing the scheme.

(6) K.T.C. to place Garbage bins at suitable points with a direction to all the lease-holders/licencees to dispose of their garbage into special bins specially kept for wet and dry garbage, biodegradable and non-biodegradable. The garbage to be removed from the premises of K.T.C.everyday.

(7) Respondent No.1 to issue notices to all lessees/licencees with ninety days from today not to carry on any business in the premises without having permission of the authorities under the provisions of the Goa Public Health Act and Rules, the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder and the provisions of the Goa Municipalities Act, 1968.This direction is independent of direction No.2. In the event presently any lessee/licencee does not have any licence under any of the Acts or the Rules,and they are entitled to in terms of the agreement to run business in the premises which requires, licence

under the Public Health Act and Food Adulteration Act, to grant them a maximum period of 90 days from the issue of notice for complying with the Rules. If that has not been complied with, the respondent no. 1 to take steps to terminate the licence/lease and further eviction from the premises.

(8) Respondents 2 and 3 are directed to carry out inspections and see that there is a compliance of the provisions of the Act and the Rules under which they are functioning.

(9) There is also need for a general direction for the whole of the State of Goa, considering the material that has come on record. It is seen that establishments, including vendors operating kiosks and moving carts, all over the State are carrying on business in total non-compliance of law, which governs them. Respondent no. 5 through its Chief Secretary is directed to immediately issue directions to all authorities concerned in the State of Goa and discharged with responsibilities to firstly provide that all establishments covered by the Goa Public Health Act establishment including kiosks/hand carts display prominently outside the establishments including the kiosks/ hand carts, the number of the licence obtained under the Goa Municipalities Act, 1968, or the Village Panchayat Act, the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder and the Goa Public Health Act, 1985 and the Rules framed thereunder. All licence numbers to be put up in bold letters showing the date the licence was issued and the date

of expiry of the licence as also the name of the person to whom the licence has been granted.

(10). Respondent no. 5 to take steps to issue suitable directions and if need be, to frame rules, within six months from today and file compliance report.

(11) Every person who has been granted a licence to operate an establishmend under the Public Health Act be directed to keep a waste-bin for the garbage occasioned by the activities and to cause the garbage from the waste-bin to be removed by the end of the day. A condition be imposed in the licence that if the garbage is not removed, then their licence will be terminated.

18. Rule made absolute in terms of paragraph 15 .

(F.I.REBELLO)
JUDGE

(P.V. HARDAS)
JUDGE.

ed's.